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THE JEWS AND THE ENGLISH LAW.

III.

THE history of the way in which the courts treat endowments for Jewish religious and communal purposes has been sketched in outline, and it has been shown how, though at one time trusts for the maintenance or propagation of the Jewish religion or religious doctrines, as distinguished from trusts for the benefit of poor adherents of that religion, would not be enforced, such trusts, with very unimportant exceptions, have since the year 1846 been carried out by the courts: it remains to deal with the view the courts have taken of claims by Jews to participate in general endowments and charities not specifically confined to any religious creed or denomination. The right of Jews to establish charities in favour of their co-religionists exclusively has been always asserted, and has been firmly established by the judicial decisions previously enumerated; on the other hand, the right of non-Jews to create endowments from which Jews or the members of any other especially designated class or religion are prohibited from deriving any advantage has never been doubted. It may be laid down that Jews are entitled to the benefit of all institutions and foundations which are not by the instrument creating them restricted either expressly or by necessary implication to members of a particular denomination. If duly authorized regulations are laid down for the distribution of a charity, with which it is impossible for a Jew to comply, it is plain that he cannot participate in the benefits of it, but he will not be excluded by the mere fact that the endowment he wishes to

take advantage of was founded at a time anterior to the readmission of Jews into this country.

The principles upon which the courts will act were laid down in the year 1818 by Lord Eldon, sitting as Lord Chancellor, in the matter of the Masters, Governors, and Trustees of the Bedford Charity. Of this case there is an excellent report by Mr. Swanston¹, which contains a whole mine of learning upon the subject in hand, but as it covers seventy pages, it is impossible to set it out in full here. It must therefore suffice to give an abstract of the facts, together with the most important portions of the judgment. The Bedford Charity had been originally established in the reign of King Edward the Sixth by Sir William Harper, Knight, and alderman of the city of London, and Dame Alice, his wife; and two Acts of Parliament had been passed, the last in 1793, for its regulation. The charity consisted of (1) a free school in the town of Bedford for the education, institution, and instruction of children and youth in grammar and good manners, and the Wardens and Fellows of New College, Oxford, were constituted Visitors of the grammar school: (2) a provision of £800 per annum for the marriage portions of forty poor maids of the town of Bedford, of good fame and reputation, in equal shares; all poor maidens resident in the town of Bedford, and being of the age of sixteen years or upwards, and under the age of fifty years, whose fathers had been occupiers of a house in the town for the space of ten years or had been born in the town and had occupied a house therein for three years, were to be at liberty to send to the Mayor an account in writing of their Christian and surnames, their ages, the places of their birth, and the names of their parents; and, if not of bad fame and reputation, were to be permitted to draw lots for sums of £20 each; and each of those who drew the beneficial lots was to be entitled to receive on the day of her marriage £20 for her portion, provided that she

¹ 2 Swanston, pp. 470-539.

should marry within two calendar months from the time of claiming such beneficial lot, and that she should not marry a vagrant or other person of bad fame or reputation: (3) a house or hospital for the habitation of poor boys and girls, born and resident within the town of Bedford, who were proper objects of charity, where they were to be suitably maintained until they were of a proper age to be put out to trade, agriculture, or other business: (4) a provision of a yearly sum of £700, to be applied, by two half-yearly sums of £350, in placing out twenty poor children apprentices every half-year, viz. fifteen boys, not being under the age of thirteen nor above the age of fifteen years, and five girls, not being under the age of twelve nor above the age of fifteen years, whose respective fathers had been occupiers of a house in the town for the space of ten years or had been born in the town and occupied a house therein for the space of three years. All such poor boys and girls, whose names had been sent in at the proper time, were to be permitted to draw lots; and the sum of £20 was to be paid as the apprentice fee with each of the fifteen boys and £10 as the apprentice fee with each of the five girls who should draw the beneficial lots upon their being respectively placed out apprentices to masters and mistresses of good character and respectability. The boys were to be bound for the space of seven years, and the girls for the space of five years; and every boy and girl so put out to apprentice, who should actually serve the full term of apprenticeship, and in all respects comply with the tenor of the indentures of apprenticeship, should, on producing to the trustees of the charity a certificate signed by their respective masters or mistresses and by the minister and churchwardens of the parish where they should have respectively served their apprenticeship, testifying such actual service and compliance with the tenor of their indentures as well as their good morals and behaviour respectively, be entitled to receive such sum of money, not exceeding £20 nor less than £10 each, as the trustees should judge proper and expedient.

(5) The surplusage of the funds, remaining after the before-mentioned objects had been carried out, was to be distributed in alms to the poor of the town for the time being.

In the year 1816 Sheba Lyon, whose father, Joseph Lyon, had been an occupier of a house in the town of Bedford for more than ten years, being then between twelve and fifteen years of age and duly qualified by the Act of Parliament, and her name having been given in in the usual form one calendar month before the time of drawing lots as directed by the Act, presented herself to the masters, governors, and trustees of the Bedford Charity as a candidate to draw a lot for the apprentice fee to be paid to girls. Permission to draw a lot was refused upon the ground that her father, Joseph Lyon, was of the Jewish persuasion, and afterwards the trustees of the charity passed a resolution not to permit any persons of the Jewish persuasion, whatever in other respects might be their qualifications under the terms of the Act of Parliament, or the children of such persons, to partake of any benefit under the Bedford Charity. In answer to an application by Mr. Isaac Lyon Goldsmid, who interceded on behalf of Sheba Lyon, the Mayor of Bedford wrote to him that the trustees, finding the number of Jews increasing in Bedford, entertained considerable doubts whether such persons were objects of the charity, and that they had been advised to refuse and had refused to admit Jews to participate in the benefit of the charity, leaving it to the persons so refused, if they should think proper, to bring the matter before the Lord Chancellor.

Accordingly a petition was presented praying that it might be declared that the poor inhabitants of the town of Bedford in other respects duly qualified were entitled to the benefit of the Bedford Charity for themselves and their children, whether they were Jews or Christians, and that Sheba Lyon should be permitted to draw lots for the apprentice fee to be paid to girls.

The evidence showed that Michael Joseph had twice voted in the annual election of trustees of the charity, that

he settled at Bedford and became a housekeeper there about thirty-one years before, and at that time there was no other person professing the Jewish religion there nor had been in the memory of man; that he had had two sons and seven daughters, all of whom were born in Bedford, and that both his sons were admitted into the free school of the charity and were educated there in the usual manner, his eldest son being in the lower or writing school, and his youngest both in the grammar and writing school; and both of them drew for and received apprentice fees from the charity, and the eldest, on being out of his apprenticeship, received the benefaction of £10; that his four eldest daughters drew for apprentice fees given to girls; the three eldest of them did not draw beneficial lots, but the youngest having drawn a beneficial lot, the apprentice fee was paid with her; that all his daughters had since claimed and received the marriage portions given to poor maidens; that no Jew had ever been proposed or elected a trustee of the charity, but that such trustees had always been elected from among the most opulent and considerable inhabitants of the town; and no Jew, during the time of Michael Joseph's first residence there, had been by his circumstances and mode of living entitled to the distinction of being elected a trustee; that no Jew boy or girl had ever been admitted into the hospital, nor any Jew into the almshouses belonging to the charity, and that no Jew girl ever received the donation given to maidservants, and no Jew ever received any part of the moneys distributed annually under the provisions of the Act among the poor inhabitants of Bedford; but that no one professing the Jewish religion since Michael Joseph's residence in the town had ever applied for or been a fitting object to partake in any of those benefactions (inasmuch as no Jew had been incapacitated by age or infirmity, so as to fall within the description of persons for whose benefit the almshouses were erected) or to receive the surplus of the charity funds annually distributed; and no Jew girl,

the daughter of an inhabitant of Bedford, had ever gone out to service; that there were then three Jew housekeepers in the town and no more, and that since Michael Joseph first came to reside in the town there had been four other Jew families resident as housekeepers there, all of whom had either left the town or ceased to be housekeepers there. The other two Jewish housekeepers resident in the town, Godfrey Levi and Joseph Lyon, also swore affidavits stating that their daughters had been admitted into the preparatory free school.

Evidence was filed on the part of the trustees setting out the regulations laid down for the government of the schools, from which it appeared that there were three schools attached to the charity, namely, the grammar school, the writing school, and the preparatory school; and affidavits were sworn by the gentlemen who were or had been masters of the schools. The education in the grammar school was similar to that in other public schools, and consisted of instruction in the Latin and Greek languages. Every boy was also instructed in the principles of the Christian religion, and required to read the Bible and New Testament. Nathan Joseph, the son of Michael Joseph, had been one of the scholars in the grammar school; he had never made further progress than learning the Latin grammar, and remained altogether not more than twelve months in the school when his father took him away; Michael Joseph had requested Dr. Brereton, the master, to dispense with his son's attendance in school at the time of morning and evening prayer, on account of its being inconsistent with his faith as a Jew, and for the same reason to dispense with his attendance on the Saturday, being the Jewish Sabbath, and also on the Jewish holidays; Nathan Joseph never attended the grammar school on a Saturday nor on certain other days which were Jewish holidays; he was very irregular in his attendance in school, of which Dr. Brereton frequently complained to his father, who uniformly described his

absence to be of necessity, on account of his being of the Jewish persuasion. No other boy of the Jewish persuasion had at any time applied for admission or been admitted into the grammar school.

All the boys in the writing school, without exception, were educated in the principles of Christianity, and taught to read and actually read the Bible and New Testament and learn and repeat the Church Catechism. The only boys of the Jewish persuasion who were admitted into the school were Joseph Joseph, eldest son of Michael Joseph, and Lemuel Lyon, son of Joseph Lyon. Michael Joseph, on the occasion of his son's admission, requested that Joseph Joseph might not be desired to attend the morning and evening prayers, on account of his religion; the master, however, did not dispense with Joseph Joseph's attendance, but permitted him to sit instead of kneel during the prayers. At his father's request Joseph Joseph was permitted to be absent from school every Saturday and also on such days as were Jewish holidays; Lemuel Lyon was also absent (though apparently his father made no request on his behalf) every Saturday and on the Jewish holidays; and neither Joseph Joseph nor Lemuel Lyon, on account of their religion, ever read the New Testament or learned the Church Catechism, as all the other boys did.

In 1815 a school had been founded for instructing the poor boys of the town upon Dr. Bell's system of education, by the name of the preparatory school; but no Jew boy had ever been educated in the preparatory school. On the afternoons of Tuesday and Thursday in each week, being the half-holidays of the boys, the school was opened for the education of girls residing in the town, in reading, writing, and arithmetic. Two daughters of Michael Joseph, three daughters of Joseph Lyon, and two daughters of Godfrey Levi, came to the preparatory school for education for about six months. The daughters of Michael Joseph informed the master that, being Jewesses, they were not allowed to read the New Testament, and he permitted

them to read the Commandments and the Bible only. The children of Joseph Lyon and Godfrey Levi, being little children, were on the above afternoons put with children of the same class to read the parables and miracles of the New Testament. All the Jew children stayed away from the school on certain days which were Jewish holidays.

The petition was presented by the before-mentioned Joseph Lyon, his daughter Sheba Lyon, and Michael Joseph, all of the town of Bedford, by five of the elders of the congregation of the Dutch and German Jews assembling at the Great Synagogue in Duke's Place, and by a similar number of the elders of the congregation of the Dutch and German Jews assembling at the New Synagogue in Leadenhall Street¹. A considerable part of the arguments and judgment was directed to the right of the elders of the synagogues to be petitioners, and it is upon this point that the case is usually quoted in the law books. This, however, was a purely technical question, a discourse on which would be out of place here, though it may be stated that Lord Eldon decided against the claim of the elders to be petitioners, as they had no direct interest in the administration of the charity. The arguments were put forward with great ability by Sir Samuel Romilly on behalf of the petitioners, and the Solicitor-General, Sir Robert Gifford, on behalf of the trustees. Want of space necessitates their omission here, except in so far as the Lord Chancellor commented upon them in his judgment. Among the remarks he made before giving final judgment, he said: "A doubt has also occurred to me, whether

¹ Mr. Picciotto in his *Sketches of Anglo-Jewish History*, at p. 289, mentions this case, and informs us that the matter was originally laid before the authorities of the Great Synagogue, who at once appointed a committee to investigate the subject, and sought the co-operation of the other Synagogues in London; but that the Hambro' Synagogue and the Sephardi Synagogue declined to entertain the matter, referring it to the Board of Deputies. He says that the court decided that a Jew was not a "parishioner." It is remarkable that this word is not to be found throughout the seventy pages of the very learned and accurate report.

admissibility into the school is within my exclusive jurisdiction; whether it does not belong to the Visitors, the Warden and Fellows of New College. They have introduced a variety of regulations for the conduct of the boys' school, with which no Jew boy could comply. Without now giving final judgment, I have no doubt that a Jew boy cannot have the benefit of that school, because he cannot comply with these regulations¹."

At length, on May 11, 1819, in finally disposing of the petition, Lord Eldon suggested that a new petition should be presented by the trustees, stating that doubts had arisen as to the construction of the Act in regard to Jews, and submitting to the court what they take to be the true exposition, as far as those persons are concerned. He added: "On the letter stated in the petition, as on a great deal urged to me in argument, those liberal ideas about worshipping God in church, chapel, or synagogue, I purpose to make no observations; it is not necessary. The decision in *Da Costa v. De Paz* has established that no one can found by charitable donation an institution for the purpose of teaching the Jewish religion; but it is quite a different question whether property can be given to perform charitable acts to persons who happen to be Jews; and it appears to me that the present is a mere question whether these individuals are or not, within the four corners of this Act of Parliament, objects of the charity thereby given. I have no concern with general principles: I am only to construe the Act²."

A new petition was accordingly presented by the trustees, praying a declaration whether the poor inhabitants of the town of Bedford who were of the Jewish persuasion were entitled with Christians to the benefit of the Bedford Charity for themselves or their children. And it was not until Aug. 23 that Lord Eldon pronounced his decision on the whole case. In the course of his judgment he said: "This charity had its foundation in letters patent of

¹ 2 Swanston, p. 520.

² Ibid., p. 522.

Edward the Sixth, who founded a grammar school at Bedford as in many other parts of the kingdom, and this is the foundation of a school, *pro institutione et instructione puerorum et juvenum in grammatica literatura et bonis moribus.*" He then, having gone through the provisions of the Acts of Parliament and summarized the evidence, proceeded as follows:—

"Many arguments were addressed from the bar on the practice and principle of toleration. I apprehend that the present question is perfectly simple in its nature, and neither more nor less than this, whether the letters patent of Edward the Sixth and these Acts of Parliament have or have not comprehended within the true construction of their provisions persons of the Jewish persuasion? Whatever my sentiments may be of the opinions expressed in some clauses of the letter written on that occasion, I apprehend that it is the duty of every judge presiding in an English court of justice, when he is told that there is no difference between worshipping the Supreme Being in chapel, church, or synagogue, to recollect that Christianity is part of the law of England; that in giving construction to the charter and Acts of Parliament he is not to proceed on that principle farther than just construction requires; but to the extent of just construction of that charter and those Acts, he is not at liberty to forget the law of the land.

"With respect to usage, as far as usage is to be looked to for an exposition of the charter, it may be convenient first to consider it with reference to the question whether Jew boys can be admitted to the school, and next to the admission of Jewish maidens. I am not sure that the first question does not belong to the Visitors; but I have no difficulty in giving my opinion on it.

"An observation not without weight is, that this school was founded as a grammar school by Edward the Sixth, who founded many throughout the kingdom, and the words 'grammar school' have generally been construed to mean

a school for instruction in the learned languages; but I believe that it has been the practice from the beginning, and I hope that it still continues and will long continue, that in these schools great care is taken to educate youth in the doctrines of Christianity; to teach them their duty to God and their neighbour in the terms in which those duties are taught in the Catechism; and I remember the time when boys so educated were attended to church every Sunday by their master, thereby giving to them the opportunity of learning the principles of that establishment which the law certainly favours.

“The result of the affidavits is, that it does not appear that any Jew ever partook of the benefits of the charity till within the last thirty years; that a Jew has voted in the choice of trustees, being canvassed for his vote by one of the aldermen of Bedford, and that two or three Jewish children have been admitted into this school (in what manner conducted will be seen presently), that they have not received the benefits of other parts of the charity, the affidavits accounting for that, because, from their circumstances of age or otherwise, they were not in a situation to solicit charitable assistance, or to be appointed trustees. Here are the regulations of the school approved by the Warden and Fellows of New College; and I can find nothing to raise an argument that would authorize me to say that they have not authority to make regulations for the conduct of the school. Even though the charter and the Acts had not excluded Jews, the charter and the Acts giving to the Warden and Fellows the power of making regulations, if these regulations in a Christian country operate to exclude Jew boys, it will remain to be considered whether that is not a due exercise of visitatorial authority and such as must be submitted to.

“There is another way of considering it, whether the Visitors have not, in excluding Jews, rightly construed the charter and the Acts. I have no doubt that Edward the Sixth had not any intention for the education of Jews.

Whatever may be our sentiments, it does not appear to me that they were within the scope of the charter, nor do I think that they are within the scope of the Acts; the Acts could not mean to comprehend persons who were not comprehended by the charter. How is it possible that the education of boys professing Christianity and of boys professing Judaism can proceed together? It is in evidence that Jew boys were absent on Jewish holidays and while the New Testament was read. They cannot comply with the regulations for education at this school in what must, according to the construction of the charter, be held to be 'boni mores.' The master always chooses the Latin and Greek books, and I know none of the grammar schools in which the New Testament is not taught, either in Latin or in Greek. In prescribing the school hours, directions are given for the attendance of the boys on every day in the week except Sunday; it is impossible that Jew boys can give that attendance consistently with the observance of Jewish holidays. Prayers are to be read every morning. What kind of prayers? They are prayers in a grammar school, where the master is a clergyman, and where the scholars are to have exhibitions to the universities, to which it is impossible that any Jew boy can be sent. It is not necessary to go through all these particulars, because it seems to me that Jews resident in Bedford, acting conscientiously, could not permit their sons to attend this school. I am therefore clearly of opinion that there is no pretence to say that they are entitled to attend.

"With respect to the other objects of the charity, the only question before me relates to Jewish maidens. First, can it be that, at the time of the letters patent, Jew girls were within their scope and meaning? Next, if it is clear that boys must be educated in the principles of Christianity, is there anything in the charter to authorize me to say that, it being the intention to found an institution a great object of which was the education of boys in the Christian religion,

other objects of the charity were to be persons not professing Christianity? Various articles interspersed all tend to show that the design of the charity was to benefit persons professing the Christian religion. I shall mention only one, that girls are required to send in their Christian names. It is said that Christian name means only first name, and that on the other construction an Anabaptist could not be admitted. Be it so; but I apprehend that Christian name does not necessarily mean baptismal name. Though Anabaptists do not baptize till later in life than other Christians, I think that the name which they give to their children is, in a sense, a Christian name. Another circumstance is, that the children are to attend public worship every Sunday. It is stated, and I doubt not truly, that Jewish children do attend worship every Sunday¹; but can any one contend that the words of the letters patent, 'attending worship every Sunday,' mean more than attending on a day on which, under the Christian religion, attendance at worship is more imperative than on any other day?"

Mr. Swanston gives the order as drawn up: "His Lordship doth declare that the poor inhabitants of the town of Bedford who are of the Jewish persuasion are not entitled to any benefit of the Bedford Charity in the said petition mentioned, for themselves or their children."

It may be mentioned that the Bedford Charity was fundamentally reorganized in 1874, when the Endowed Schools Commission enacted a scheme by which the whole amount of the funds is expended upon the schools except a comparatively small sum which is allotted to the endowment of forty-five almshouses. Under the new scheme there is no provision which excludes Jews from participating in the charity.

The judgment of Lord Eldon is now no longer of practical importance in regard to the particular charity in respect of which it was pronounced; but the reasoning upon which

¹ Sir S. Romilly had argued that the synagogue was open every day, and a Jew might attend worship there on a Sunday.

this decision (delivered by one of our ablest and most careful judges after mature deliberation) was based, and the principles underlying it, are still of great moment in discussing the question which is now being dealt with. A few comments upon it will therefore not be out of place. On the admission of Jewish boys to the school the Chancellor felt no doubt, and upon this point his judgment is conclusive, founded, as it really is, if carefully examined, upon the impossibility of Jewish boys complying with the regulations properly laid down for the government of the school by the duly constituted Visitors of it. He, however, as his custom was, supports this reason by others which, though cogent, are not so convincing. For instance, the fact that there were no Jews living in England at the time no doubt leads to the inference that Edward the Sixth had no intention to provide for the education of Jewish children, but it by no means compels the conclusion that it was his purpose, in the event of Jews being in the future allowed to settle in the country and openly practise their religion, to exclude their children from the advantages of the institution he was founding by the charters; and though of some weight in estimating the power of the Visitors to make the rules they had drawn up, this fact, taken by itself, could not operate to deprive any class of persons of the benefits to which they would be otherwise entitled. The impossibility of educating Christian and Jewish boys together is not now so apparent as it was at the beginning of the nineteenth century, and the mere fact of calling a school a grammar school would not at the present time be taken to necessarily imply that instruction in the doctrines of Christianity should form part of the curriculum. But men's notions upon these matters have changed; indeed, even in Lord Eldon's time they had been relaxed, for he mentions with regret that it was no longer customary for the scholars of a grammar school to attend the church service every Sunday accompanied by their master.

With regard to the portions for poor maidens and the

apprenticeship fees, Lord Eldon felt some doubt; but his decision is justified by the regulation requiring attendance at public worship on Sunday. The ingenious argument upon this point, that, inasmuch as the Jewish synagogue was open every day, Jews could comply with this requirement, was rightly overruled. On the other hand, the reasoning founded on the meaning of Christian names is far from conclusive. It will be remembered that the surplus of the funds of the charity was to be distributed in alms to the poor of the town. The effect of the order as drawn up was to exclude poor Jews from such distribution. Upon this point no argument was addressed to the court, nor is there anything in the judgment to indicate that this result was deliberately contemplated. In any case it is submitted that this particular result was not in accordance with law, and that the true principle is, as stated at the outset and borne out by the judgment delivered in the case, that charitable endowments may be confined to members of a particular faith only if words imposing such restriction are used in their creation, and that all persons, to whatever race or faith they may belong, who can and do comply with the conditions properly laid down for the distribution of an endowment are entitled to participate in it.

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